

Order

Michigan Supreme Court
Lansing, Michigan

May 25, 2016

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2015-12

Stephen J. Markman
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen,
Justices

Amendments of Rules 3.605, 3.606,
3.928, 3.944, 3.956, 6.001, 6.425,
6.445, 6.610, and 6.933 of the
Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 3.605, 3.606, 3.928, 3.944, 3.956, 6.001, 6.425, 6.445, 6.610, and 6.933 of the Michigan Court Rules are adopted, effective September 1, 2016.

[The present language is amended as indicated below by underlining
for new text and strikeover for text that has been deleted.]

Rule 3.605 Collection of Penalties, Fines, Forfeitures, and Forfeited Recognizances

(A)-(C)[Unchanged.]

(D) Remission of Penalty. An application for the remission of a penalty, including a bond forfeiture, may be made to the judge who imposed the penalty or ordered the forfeiture. The application may not be heard until reasonable notice has been given to the prosecuting attorney (or municipal attorney) and he or she has had an opportunity to examine the matter and prepare to resist the application. The application may not be granted without payment of the costs and expenses incurred in the proceedings for the collection of the penalty, unless waived by the court.

(E) [Unchanged.]

Rule 3.606 Contempts Outside Immediate Presence of Court

(A)-(E)[Unchanged.]

- (F) The court shall not sentence a person to a term of incarceration for nonpayment unless the court has complied with the provisions of MCR 6.425(E)(3). Proceedings to which the Child Support and Parenting Time Enforcement Act, MCL 552.602 *et seq.*, applies are subject to the requirements of that act.

Rule 3.928 Contempt of Court

(A)-(C)[Unchanged.]

- (D) Determination of Ability to Pay. A juvenile and/or parent shall not be detained or incarcerated for the nonpayment of court-ordered financial obligations as ordered by the court, unless the court determines that the juvenile and/or parent has the resources to pay and has not made a good-faith effort to do so.

Rule 3.944 Probation Violation

(A)-(E)[Unchanged.]

- (F) Determination of Ability to Pay. A juvenile and/or parent shall not be detained or incarcerated for the nonpayment of court-ordered financial obligations as ordered by the court, unless the court determines that the juvenile and/or parent has the resources to pay and has not made a good-faith effort to do so.

Rule 3.956 Review Hearings; Probation Violation

(A)-(B)[Unchanged.]

- (C) Determination of Ability to Pay. A juvenile and/or parent shall not be detained or incarcerated for the nonpayment of court-ordered financial obligations as ordered by the court, unless the court determines that the juvenile and/or parent has the resources to pay and has not made a good-faith effort to do so.

Rule 6.001 Scope; Applicability of Civil Rules; Superseded Rules and Statutes

(A) [Unchanged.]

- (B) Misdemeanor Cases. MCR 6.001-6.004, 6.005(B) and (C), 6.006, 6.102(D) and (F), 6.103, 6.104(A), 6.106, 6.125, 6.202, 6.425(E)(3), 6.427, 6.435, 6.440, 6.445(A)-(G), and the rules in subchapter 6.600 govern matters of procedure in criminal cases cognizable in the district courts.

(C)-(E)[Unchanged.]

Rule 6.425 Sentencing; Appointment of Appellate Counsel

(A)-(D) [Unchanged.]

(E) Sentencing Procedure.

(1)-(2) [Unchanged.]

(3) Incarceration for Nonpayment.

- (a) The court shall not sentence a defendant to a term of incarceration, nor revoke probation, for failure to comply with an order to pay money unless the court finds, on the record, that the defendant is able to comply with the order without manifest hardship and that the defendant has not made a good-faith effort to comply with the order.
- (b) Payment alternatives. If the court finds that the defendant is unable to comply with an order to pay money without manifest hardship, the court may impose a payment alternative, such as a payment plan, modification of any existing payment plan, or waiver of part or all of the amount of money owed to the extent permitted by law.
- (c) Determining manifest hardship. The court shall consider the following criteria in determining manifest hardship:
 - (i) Defendant's employment status and history.
 - (ii) Defendant's employability and earning ability.
 - (iii) The willfulness of the defendant's failure to pay.
 - (iv) Defendant's financial resources.
 - (v) Defendant's basic living expenses including but not limited to food, shelter, clothing, necessary medical expenses, or child support.
 - (vi) Any other special circumstances that may have bearing on the defendant's ability to pay.

(F)-(G) [Unchanged.]

Rule 6.445 Probation Revocation

(A)-(F)[Unchanged.]

(G) Sentencing. If the court finds that the probationer has violated a condition of probation, or if the probationer pleads guilty to a violation, the court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation and impose a sentence of incarceration. The court may not sentence the probationer to prison without having considered a current presentence report. The court may not sentence the probationer to prison or jail for failing to pay fines, costs, restitution, and other financial obligations imposed by the court without-and having complied with the provisions set forth in MCR 6.425(B) and (E).

(H) [Unchanged.]

Rule 6.610 Criminal Procedure Generally

(A)-(E)[Unchanged.]

(F) Sentencing.

(1) [Unchanged.]

(2) The court shall not sentence a defendant to a term of incarceration for nonpayment unless the court has complied with the provisions of MCR 6.425(E)(3).

~~(2)~~(3) [Renumbered, but otherwise unchanged.]

~~(3)~~(4) [Renumbered, but otherwise unchanged.]

(G)-(H)[Unchanged.]

Rule 6.933 Juvenile Probation Revocation

(A)-(D)[Unchanged.]

(E) Determination of Ability to Pay. A juvenile and/or parent shall not be detained or incarcerated for the nonpayment of court-ordered financial obligations as ordered by the court, unless the court determines that the juvenile and/or parent has the resources to pay and has not made a good-faith effort to do so.

Staff Comment: The amendments of MCR 3.605, 3.606, 3.928, 3.944, 3.956, 6.001, 6.425, 6.445, 6.610, and 6.933 were submitted by the Michigan State Planning Body for the Delivery of Legal Services to the Poor. The rule revisions are intended to provide clarity and guidance to courts regarding what courts would be required to do before incarcerating a defendant for failure to pay.

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 25, 2016

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk